

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In Re:

BED BATH & BEYOND INC, et al.¹

Debtor.

Case No.: 23-13359 (VFP)

Chapter 11

Judge Vincent F. Papalia

(Jointly Administered)

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

**DECLARATION OF DOUGLAS ROBERTS IN SUPPORT DEBTORS' MOTION
FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 365 AND 363
APPROVING THE LEASE TERMINATION AGREEMENT WITH AGUA MANSA
COMMERCE PHASE I, LLC**

I, Douglas Roberts, declare that:

1. I am an Executive Director, Asset Management for PGIM Real Estate ("PGIM"), a business unit of PGIM, Inc. My offices are in Newark, New Jersey. PGIM provides asset management services for numerous entities, including Agua Mansa Commerce Holdings, LLC, the managing member of Agua Mansa Commerce Phase I, LLC, a Delaware limited liability company ("Landlord"). I am an authorized representative of Landlord and authorized to execute this declaration on its behalf.

2. I have personal knowledge of the facts described herein and if called as a witness, I could and would testify competently thereto.

3. I submit this Declaration in support of the motion (the "Motion") of the above-captioned debtors and debtors-in-possession (the "Debtors") for an order authorizing the rejection and termination of, and transfer of, the Debtors' interest in that certain Lease (as defined below) between Landlord, as landlord, and debtor Bed Bath & Beyond Inc., as tenant, with respect to the real property located at, and commonly known as, 6120 Clinker Drive, Jurupa Valley, California (the "Premises"), consisting of an approximately 1,025,132 square feet. Specifically, this Declaration is intended to provide evidentiary support for a good faith finding by the United States Bankruptcy Court for the District of New Jersey in this Chapter 11 Case with respect to the termination and transfer of Debtors' interest in the Lease pursuant to the Lease Termination Agreement (defined below). All capitalized terms used herein shall have the meaning ascribed to them in the Motion and the Lease Termination Agreement unless otherwise defined.

4. Landlord and Bed Bath & Beyond Inc. are parties to that certain Industrial Lease dated November 8, 2021 (the "Lease") with respect to the Premises. Starting in early 2023, Landlord and Debtors, through their respective representatives, had preliminary discussions

regarding a potential consensual termination of the Lease but those communications did not produce an agreement between the parties. There were no active negotiations at the time of the filing of Debtors' Chapter 11 on April 23, 2023 (the "Petition Date").

5. Following the Petition Date, negotiations resumed as to a potential termination of the Lease by which the Lease would be terminated in consideration of a termination payment by Landlord, coupled with release of the existing letter of credit delivered by Debtors under the Lease and the mutual releases of claims arising from or related to the Lease, as ultimately provided in the Lease Termination Agreement, dated June 13, 2023 (the "Lease Termination Agreement"), a copy of which is attached as Exhibit 1 to the Motion.

6. The negotiations regarding the Lease Termination Agreement following the Petition Date were primarily conducted by Landlord's outside counsel, Allen Matkins Leck Gamble Mallory & Natsis LLP, Cole Schotz P.C., counsel for Debtors, and A&G Realty, Debtors' real estate advisor.

7. These negotiations were initially undertaken through exchanges of term sheets in late May and early June, 2023. Based on the exchanges of term sheets, on June 7, 2023, our counsel transmitted a draft form of Lease Termination Agreement to Debtors' team. After exchanging multiple drafts containing various revisions and changes to the cash consideration component (Paragraph 3 of the Lease Termination Agreement) and follow up discussions, the Lease Termination Agreement was executed by me, on behalf of Landlord, on June 12, 2023, and transmitted to Debtors' representatives that day. We received a fully-executed counterpart from Debtors the next morning, June 13, 2023.

8. Based on a diligent search and inquiry, neither Landlord, nor any of the Landlord's managers or members, is an insider (as defined in Bankruptcy Code section 101(31) of the Bankruptcy Code) of the Debtors and Landlord, nor its managers or members, has or holds any debt or equity interests in the Debtors.

9. Based on a diligent search and inquiry, neither Landlord, nor any of the Landlord's managers or members, including myself, are (a) employees, members, or lenders of

the Debtors, or (b) other than with respect to the landlord-tenant relationship being terminated by the Lease Termination Agreement, creditors of the Debtors in these Chapter 11 Cases. Through PGIM, there are five other Bed Bath & Beyond and buy buy Baby locations (Palm Desert, California, Viera, Florida, Annapolis, Maryland and Sunset Valley, Texas) under common management with that of the Premises.

10. The Landlord does not anticipate any post-sale relationship with, or making any offers of employment or compensation to any of, the Debtors' current or former members, employees or insiders.

11. At all relevant times with respect to the negotiations regarding the prospective termination of the Lease, the exchanges of term sheets and draft agreements, and the resulting Lease Termination Agreement, the Landlord has maintained and continues to maintain an arms' length, third party relationship with the Debtors, its current and former members, employees, attorneys and with other interested parties in these Chapter 11 Cases.

12. Prior to execution of the Lease Termination Agreement, Landlord did not have any discussions and did not enter into any agreement, understanding or arrangement with any other person or entity to attempt to control the consideration to be paid and given under the Lease Termination Agreement or dissuade or impede any person or entity from conducting due diligence with respect to Debtors' interest in the Lease or considering bidding on Debtors' leasehold interest. It is our understanding that, prior to execution of the Lease Termination Agreement, the Debtors' leasehold interest was marketed for prospective assignment by JLL and A&G Realty, Debtors' real estate advisors.

13. Accordingly, based on the foregoing. I believe and submit that the Landlord is acting in good faith with respect to its purchase of the Property pursuant to the Lease Termination Agreement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 26th day of June 2023, at Newark, New Jersey.


DOUGLAS ROBERTS